

English abstract

This diploma thesis is concerned with the institution of the estate in insolvency proceedings. The insolvency estate is a key concept in insolvency law, as the successful consummation of the very goal of insolvency proceedings depends on the substance of this term. The goal of insolvency proceedings is the highest possible, properly prorated satisfaction of the debtor's creditors. The present thesis does not attempt to cover the concept of the insolvency estate in its entire breadth with respect to the various methods for resolving the debtor's insolvency, but instead focuses on the general delineation of the insolvency estate and on certain specific aspects related to bankruptcy discharge. The thesis also discusses some of the most recent changes to the law which were introduced in particular by the bankruptcy discharge amendment effective as of 1 June 2019 – an amendment which has fundamentally changed the previous legal framework for bankruptcy discharge and which has had a not insignificant impact also on the way in which the insolvency estate as a legal concept is shaped.

The main objective pursued by this diploma thesis is to assess the current legal framework governing the insolvency estate as well as the institutions which build upon the insolvency estate, in terms of how they hold up in legal practice. The thesis also seeks to point to certain shortcomings of the current law, to analyze the divergent views in the scholarly literature as to how certain provisions in the Insolvency Act on the insolvency estate should be interpreted according to the legal community, and to make proposals as to what changes to the current legal framework may be desirable. The thesis achieves these objectives primarily by using the descriptive method and, building upon this method, an analysis of the law, of the literature, and of the case law of the high courts and the Supreme Court.

This thesis follows a five-part structure. The first part is devoted to defining the insolvency estate in terms of its substance and scope, and to the legal concepts of invalidity and inoperativeness of legal transactions, respectively. Part Two engages with the activities of the insolvency trustee (i.e., establishing which assets form the insolvency estate, and drawing up a list of these assets). Part Three discusses the various ways in which assets, having once been included in the list of assets forming the insolvency estate, may be struck from this list. Part Four is concerned with the disposal and management of the insolvency estate. The fifth and final part belongs to a discussion of certain legal institutions related to the insolvency estate which were introduced by recent amendments to the statutory provisions on bankruptcy discharge. The thesis concludes with a summary of the findings made, and refers to contentious

aspects of the current legal framework for the insolvency estate from the point of view of the legal practitioner. The conclusion also outlines proposals for potential future legal amendments.

Title of thesis

Bankrupt's estate in the insolvency proceedings

Key words

bankrupt's estate, the insolvency proceeding, the insolvency act, bankruptcy discharge